

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	MB Docket No. 14-127
Expanding Online Public File Obligations to	)	
Cable and Satellite TV Operators	)	

To: The Media Bureau

**COMMENTS OF NATIVE PUBLIC MEDIA**

Native Public Media (“NPM”) respectfully submits these comments in response to the Public Notice (“PN”) issued on August 7, 2014 in the above-captioned proceeding. Native Public Media is a non-profit national organization whose mission is to promote healthy, engaged and independent Native Communities through media access, control and ownership.

There are 566 federally-recognized American Indian Tribes and Alaska Native Villages in the United States and more than 5 million Native Americans in the United States.<sup>1</sup> Radio, and particularly noncommercial educational (“NCE”) radio, plays a uniquely vibrant role in Indian Country. There are currently 53 Native owned and licensed NCE radio stations providing critical information about education, culture, public safety, and health to Tribal members across fifteen states. On these stations, you can hear Hopi, Navajo, Sioux, Apache and a host of other rich and vibrant Native American languages.

Despite the success of these noncommercial radio stations, unfortunately, many Native American communities have yet to enjoy the same level of broadband Internet and other media services the rest of America takes for granted. While most of America in 2014 enjoys the

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<sup>1</sup> See [www.bia.gov/WhoWeAre/BIA/OIS/TribalGovernmentServices/TribalDirectory/;www.census.gov/newsroom/releases/archives/facts\\_for\\_features\\_special\\_editions/cb13-ff26.html](http://www.bia.gov/WhoWeAre/BIA/OIS/TribalGovernmentServices/TribalDirectory/;www.census.gov/newsroom/releases/archives/facts_for_features_special_editions/cb13-ff26.html).

benefits of media convergence, many Native Americans are still fighting against tremendous odds for inclusion in the nation's media and technological revolution.

As discussed below, the Commission should not use this proceeding to expand its online public file requirements to radio stations at all, and especially not to Native NCE radio stations. For many Native NCE radio stations, uploading public files would simply be technically impossible because of the lack of broadband access, and for others such a requirement would have a significant budgetary impact on stations that already grapple with very limited technical and staff resources.

## **II. This Proceeding is Not About Radio.**

The PN was issued in response to a Petition for Rulemaking filed on July 31, 2014, by The Campaign Legal Center, Common Cause and the Sunlight Foundation (the “Petition”). The Petition asks for only one thing – that the Commission “initiate a rulemaking to expand to *cable and satellite systems* the requirement that public and political files be posted to the FCC’s online database.”<sup>2</sup> Because a significant amount of political television advertising is distributed through cable and satellite (*i.e.*, DBS) systems, the Petition contends that the Commission’s online public file requirement for television stations should extend to *television political ads* distributed through cable and DBS systems.

Despite the fact that the Petition does not make a single use of the word “radio,” and despite the fact that no other party has asked the Commission to add the public files from over 15,000 radio stations across the nation (nearly seven times the number of television stations)<sup>3</sup> to

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<sup>2</sup> *Petition* at 1 (emphasis added). The Petition is available at [www.apps.fcc.gov/ecfs/document/view?id=7521751780](http://www.apps.fcc.gov/ecfs/document/view?id=7521751780).

<sup>3</sup> According to the Commission, there are 15,425 licensed radio stations compared to 2,214 (including Class A) licensed television stations. See *News Release*, Broadcast Station Totals as

the Commission's online database, the PN – with a solitary sentence – seeks, unnecessarily and prematurely, to expand the scope of this docket to include radio stations.

The Commission's online public file database has only been in place for two years and it was not until July 1, 2014 – less than two months ago – that smaller market television stations were required to upload their political files for the very first time.<sup>4</sup> With such limited experience, especially with smaller market stations – and no experience yet for smaller market stations during a lowest unit charge 60-day general election window,<sup>5</sup> let alone a Presidential election cycle – it is premature to consider adding 15,425 radio stations to the online public file mix at this stage.<sup>6</sup>

### **III. Even If the FCC Expands Online Public File Obligations to Radio, It Should Exempt Noncommercial Radio.**

If the Commission should decide to hastily drag radio stations into a proceeding that is more properly focused on cable and DBS operators, the Commission should exempt NCE radio

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of June 30, 2014 (July 9, 2014), available at [www.apps.fcc.gov/edocs\\_public/attachmatch/DOC-328096A1.pdf](http://www.apps.fcc.gov/edocs_public/attachmatch/DOC-328096A1.pdf).

<sup>4</sup> *Public Notice*, Media Bureau Reminds Television Broadcasters of July 1, 2014 Online Political File Deadline (April 4, 2014), available at [www.apps.fcc.gov/ecfs/document/view?id=7521096823](http://www.apps.fcc.gov/ecfs/document/view?id=7521096823).

<sup>5</sup> See 47 C.F.R. § 73.1942 (during the 60-day window prior to a general election, candidates are entitled to receive the lowest unit charge of the station for the same class and amount of time for the same period).

<sup>6</sup> The Commission's staff already has delegated authority to "allow (but not require) radio stations to voluntarily post their public files at such time as staff determines that such an option is feasible and desirable." *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535, 4586 (2012) ("Second Report and Order"); see also PN at note 5. Although the staff has yet to make this option available, NPM supports the *voluntarily* transition to online public files for radio stations. In fact, the experiences of radio stations who volunteer to maintain their public files online would provide the Commission with useful information for any eventual properly timed rulemaking.

stations from online public file requirements on grounds that the burden on the often limited human and technical resources available to NCE radio stations far outweigh any resulting public benefit.

Although the Petition argues eloquently in favor of the public benefits that come from political advertising transparency, these benefits are entirely inapplicable to NCE radio stations because they are prohibited from selling political advertising. Consequently, requiring online public file obligations for NCE radio stations would not advance the goal of the Petition. An NCE station's political files would not contain any information about political spending or political advertising rates.<sup>7</sup>

In addition, expanding the online public file requirements to NCE radio stations would require an exception for the "donor list" maintained by each NCE station of its donors who have supported specific programs.<sup>8</sup> For the same reasons that the Commission has already excluded letters and emails from listeners and viewers in commercial stations' online public files, the Commission must ensure the privacy of donors by excluding NCE radio station donor lists from any eventual online requirements.<sup>9</sup> Moreover, NCE stations that receive grants from the Corporation for Public Broadcasting are required to protect the privacy rights of their donors.<sup>10</sup>

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<sup>7</sup> Although noncommercial radio stations are prohibited by section 399B of the Communications Act from accepting paid political and issue advertising, they do maintain a political file for documenting any candidate "uses" that would trigger "equal opportunities" under the Act. *See* 47 C.F.R. §§ 73.1943 and 73.3527(e)(5). Additionally, noncommercial radio stations maintain a record in their political files of any candidate requests for time, even though that request must, by law, be denied. *See* 47 U.S.C. §§ 399 and 399B.

<sup>8</sup> *See* 47 C.F.R. § 73.3527(e)(9).

<sup>9</sup> Noncommercial stations are not subject to the same public file requirements for letters and emails from listeners and viewers. *Compare* 47 C.F.R. § 73.3526(e)(9) with 47 C.F.R. § 73.3527(e)(9).

<sup>10</sup> *See* 47 U.S.C. § 396(k)(12).

**IV. The Commission Should Not Impose Undue Regulatory Burdens on NCE Radio Stations.**

Any eventual extension of the online public file requirements to radio must ensure that the expansion does not impose undue regulatory burdens on NCE radio stations. Specifically, the Commission must provide adequate notice to NCE radio stations before online requirements become mandatory so that stations can incrementally re-align their donor-dependent budgets to resources that will be necessary to create and maintain online public files.<sup>11</sup> Moreover, the Commission should also assure noncommercial radio stations that the Commission's staff will be empowered to provide waivers of any online public file requirements to NCE radio stations upon a simple showing that maintaining online public files would impose an unreasonable burden on a station due either to undue economic hardship or as a result of technical impediments.<sup>12</sup>

**V. Native American Noncommercial Stations Operate Under Special Circumstances.**

Although NPM urges the Commission not to initiate a rulemaking proceeding that would extend online public file requires to radio, and certainly not to NCE radio, there are additional compelling reasons that Native-owned NCE radio stations would be disparately impacted by any expansion of the online public file requirements.

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<sup>11</sup> In the *Second Report and Order*, the Commission required television stations affiliated with the top four national networks (ABC, NBC, CBS, and Fox) licensed to serve communities in the top 50 Designated Market Areas (DMAs) to post political file documents online beginning August 2, 2012, but the Commission exempted all other stations from posting their political file documents to their online public file until July 1, 2014. *See Second Report and Order*, 27 FCC Rcd at 4536-7. In adopting this two-year exemption for smaller market stations, the Commission specifically acknowledged that all but the largest commercial stations required additional time "to familiarize themselves with the online filing requirements." *Id.*, 27 FCC Rcd at 4595-96.

<sup>12</sup> *See Second Report and Order*, 27 FCC Rcd at 4559.

### **A. Some Native Communities Lack Broadband Access.**

Many Native-owned NCE radio stations operate on Tribal lands and in economically struggling Native communities that are sorely lacking in broadband access. With Tribal land broadband penetration rates currently estimated to be somewhere between five and 10 percent,<sup>13</sup> broadband access for many Tribal communities lags significantly behind the rest of the United States. The importance of this issue is highlighted by a letter sent just earlier this summer from U.S. Representative Anna Eshoo, Ranking Member on the House Subcommittee on Communications and Technology, along with several of other House Members, to the U.S. Government Accountability Office (“GAO”) requesting that GAO examine the current state of communications services on Tribal lands.”<sup>14</sup>

And even in communities where broadband is theoretically available, actual access is often severely hampered by high latency, compounded by slow dial-up speeds and unreliable coverage. Accordingly, the complete lack of broadband access in some Native communities, and unreliable service in others, would make it difficult, if not impossible, for some Native-owned NCE radio stations to upload large files to the Commission’s online public file database. Moreover, there would be marginal benefit – outweighed by significant economic cost – in

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<sup>13</sup> See Connecting America: The National Broadband Plan (2010), at Chapter 8, note 132, available at [www.transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf](http://www.transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf); see also Improving Communications Services for Native Nations, GC Docket No. 11-41, Notice of Inquiry, 26 FCC Rcd 2672, 2681-82 (Mar. 4, 2011), available at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-11-30A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-11-30A1.pdf); Prepared Remarks of Tom Wheeler Chairman, Federal Communications Commission, National Congress of American Indians (Mar. 12, 2014) (“Our analysis estimates that the percentage of Americans in rural Tribal communities without access to fixed broadband is 8 times higher than the national average.”).

<sup>14</sup> Available at [www.eshoo.house.gov/uploads/6.18.14%20Letter%20to%20GAO%20on%20Tribal%20Communications%20Services.pdf](http://www.eshoo.house.gov/uploads/6.18.14%20Letter%20to%20GAO%20on%20Tribal%20Communications%20Services.pdf).



making station public files available online in communities where listeners also suffer from limited Internet access.

**B. Online Public File Requirements Would Conflict with the Commission's Tribal Radio Priority Initiatives.**

In recent years, the Commission has proudly asserted that its new radio licensing Tribal Priority system<sup>15</sup> will provide opportunities for “Tribal Nations themselves to preserve and advance their languages and cultural values through a communications medium, to increase economic development opportunities through advertising and promotion, to provide job training and employment opportunities, and to promote the further adoption of new communications technologies, such as broadband.”<sup>16</sup> Any requirement that new Tribal radio stations devote their severely limited resources to uploading public files in what may very well be a futile effort, given the dearth of broadband infrastructure, will certainly serve to discourage and delay the creation of new Tribal Nations radio stations. Worse yet, an online filing requirement may for some existing Native NCE radio stations, already struggling with limited technical and staff resources, become the difference between continuing to operate and being forced to go silent.<sup>17</sup>

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<sup>15</sup> See Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures, MB Docket No. 09-52, Third Report and Order, 26 FCC Rcd 17642 (2011); *see also* Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures, MB Docket No. 09-52, First Report and Order and Further Notice of Proposed Rule Making, 25 FCC Rcd 1583, 1586 (2010).

<sup>16</sup> Office of Native Affairs and Policy, 2012 Annual Report at 6 (Mar. 23, 2013), available at [www.transition.fcc.gov/cgb/onap/ONAP-AnnualReport03-19-2013.pdf](http://www.transition.fcc.gov/cgb/onap/ONAP-AnnualReport03-19-2013.pdf).

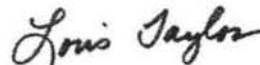
<sup>17</sup> According to the Commission's Consolidated Database System (“CDBS”), there are currently 281 full-power radio stations (186 FM and 95 AM) that are “licensed and silent.” In contrast, not a single full-power television station is listed in CDBS as “licensed and silent.” Broadcast station information in CDBS is available at [www.licensing.fcc.gov/prod/cdbbs/pubacc/prod/sta\\_sear.htm](http://www.licensing.fcc.gov/prod/cdbbs/pubacc/prod/sta_sear.htm).

**VI. Conclusion.**

The Petition for Rulemaking filed by The Campaign Legal Center, Common Cause and the Sunlight Foundation asks only that the Commission consider a rulemaking to expand the online public file requirements to *cable and satellite systems* without a single mention of radio. Any effort by the Commission to include radio stations, and particularly NCE stations serving Native communities, would be premature and would divert already severely limited resources away from their core mission of serving their communities.

Respectfully submitted,

**NATIVE PUBLIC MEDIA**



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Dated: August 28, 2014